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No. 91-1224

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

PATRICIA ANN OUZTS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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QUESTION PRESENTED

Did the Supreme Court of South Carolina err in upholding the trial court's denial of Petitioner's motion to suppress marijuana found during the search of her car because the car was covered by the search warrant and, even if it were not covered, probable cause existed to justify the search of the car under the automobile exception to the warrant requirement?

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Respondent, State of South Carolina, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the unpublished opinion of the Supreme Court of South Carolina in this case. See State v. Ouzts, Op. No. 91-MO-237 (S.C.S. Ct. 1991). The opinion has been reproduced in Petitioner's Appendix.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

STATEMENT OF THE CASE

Facts underlying Crimes and Procedural History of Case

On Wednesday, November 22, 1989, the Metro Narcotics Unit of the Greenwood County Sheriff's Department began surveillance of a residence located on the corner of East Cambridge Street and Willowdale Court in Greenwood, South Carolina. The residence was surrounded by a chain link fence; because there was no driveway, the only place one could park was on the road in front of the house. On that day, police observed Petitioner drive up to the residence in her Cadillac; she parked directly in front of the gate to the fence and, along with George Dillard who was a passenger in the car, got out and entered the residence. (Tr. p. 39, line 22 - p. 41,

line 19; p. 45, line 22 - p. 46, line 11; p. 50, line 25 - p. 51, line 10; p. 66, line 23 - p. 67, line 9).[1] On the following night, Petitioner was followed as she left the residence in her car and drove to a mill. She was also followed on the following morning, when she left the mill and returned to the residence. Police continued to watch the house that day, but did not observe anything. (Tr. p. 41, line 16 - p. 42, line 5; p. 70, lines 7-17).

Although a check of the license plate on Petitioner's car revealed that it was registered to another address -- i.e., Greenwood Trailer Park -- the car was never seen there when Sgt. G. Douglas Gunter, Jr. checked. (Tr. p. 49, line 10 - p. 50, line 2; p. 70, line 18 - p. 71, line 19).

On the afternoon of Friday, November

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[1] References to the appellate record filed with the Supreme Court of South Carolina in this matter are indicated by "Tr. p." and "p."

24, 1989, Sgt. Gunter obtained a search warrant for the residence located on the corner of East Cambridge Street and Willowdale Court in Greenwood. (Tr. p. 42, lines 8-14).

From that time until Thursday, November 30, 1989, Petitioner's Cadillac was the only car in which Petitioner or Dillard were observed. (Tr. p. 42, lines 15-22; p. 45, lines 4-21). The car was seen at the residence several times; it was always parked on the street directly in front of the gate to the fence. Petitioner was either seen going into or coming out of the residence on a couple of occasions. (Tr. p. 50, lines 7-24).

At approximately ten o'clock p.m. on November 30, 1989, Sgt. Gunter, Captain Ronnie McAllister, and Officer Charles McLeod went to the residence to execute the search warrant. Capt. McAllister knocked on the door and, when it was opened by an

unidentified female, identified themselves and their purpose for being there. As the officers entered the apartment, they saw Dillard and Petitioner laying in a bed in front of the door. Petitioner, who was asleep, was awakened and the officers began their search. The search of the apartment revealed three (3) partially consumed marijuana cigarettes; one (1) was located beside the bed and two (2) were located in the bathroom. The search also disclosed two (2) hand held scales that would measure up to an ounce; they were found in a coat Petitioner identified as belonging to her. Capt. McAllister then arrested Petitioner and Dillard for possession of marijuana. (Tr. p. 47, lines 2-15; p. 63, line 18 - p. 64, line 2; p. 65, lines 12-25; p. 75, line 2 - p. 83, line 1; p. 83, lines 15-23; p. 84, line 9 - p. 85, line 9; p. 85, line 13 - p. 86, line 16; p. 91, line 5 - p. 92, line 10; p. 98, lines 5-10).

While Capt. McAllister and Officer McLeod conducted the search of the apartment, Sgt. Gunter asked Petitioner for the keys to her car. He then went out and searched it. While the search of the passenger compartment revealed no contraband, the search of the trunk revealed a quantity of plant material believed to be marijuana. Inside a blue sports bag located in the trunk, Sgt. Gunter found eleven (11) plastic bags of plant material, a box of zip-loc plastic bags, a roll of black tape and a black pocketbook; the black pocketbook contained six (6) bags of plant material and two (2) black tape-wrapped objects which, when opened, were found to contain plant material. (Tr. p. 47, line 15 - p. 48, line 5; p. 50, lines 3-6; p. 51, line 11 - p. 55, line 18; p. 57, lines 9-13; p. 58, lines 4-11; p. 64, line 3 - p. 65, line 11).

Sgt. Gunter carried the sports bag to Capt. McAllister who inventoried its

contents. (Tr. p. 59, line 20 - p. 60, line 4). At that time, Captain McAllister advised Petitioner and Dillard that they were being arrested for possession of marijuana with intent to distribute. (Tr. p. 83, line 23 - p. 84, line 3).

Petitioner was subsequently indicted and tried for the offenses of possession of marijuana and possession of marijuana with intent to distribute. At the conclusion of her jury trial, she was found guilty of possession of marijuana with intent to distribute and accordingly sentenced. (Tr. p. 1).

Petitioner appealed her convictions to the Supreme Court of South Carolina. In affirming her convictions and sentences in an unpublished memorandum opinion, the state court rejected Petitioner's challenge to the trial court's denial of her motion to suppress marijuana found during a search of her car. That opinion reads, in pertinent

part, as follows.

> Affirmed pursuant to Supreme Court Rule 23 and the following authorities: Exceptions 1-4: State v. Dean, 282 S.C. 135, 317 S.E.2d 744 (1984); California v. Carney, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985)....

State v. Ouzts, supra. Petitioner timely filed a Petition for Rehearing which was denied by the Supreme Court of South Carolina.

Facts Relating to Motion to Suppress (Argument)

At the beginning of Petitioner's trial, Petitioner's counsel moved to suppress evidence seized from Petitioner's car. (Tr. p. 2, lines 13-15; p. 2, lines 22-23). The trial court then held an in camera hearing on the motion during which both the State and the defense presented evidence.

The State called Sergeant George Douglas Gunter, Jr., of the Greenwood County Sheriff's Office, to the stand. He testified that during the week of November

20, 1989, he received information from a reliable confidential informant that there was a quantity of plant material believed to be marijuana inside the garage apartment located on the corner of East Cambridge and Willowdale in Greenwood County. Sgt. Gunter was also told that a man named Butch Dillard lived in the apartment with his girlfriend, Pat, and another female, Judy. Based upon this information, Sgt. Gunter conducted surveillance of the apartment; his surveillance revealed that the apartment was located within a chain link fence, there was no driveway, and the gate to the fence opened onto a walkway which led directly to the apartment door. During the time the apartment was watched, the only car seen going to or from it was that belonging to Petitioner -- she was by herself sometimes and, at other times, Butch was in the car with her. Petitioner was followed, on at least one (1) occasion, as she left the

apartment late at night and drove to Greenwood Mills where she worked. (Tr. p. 3, line 8 - p. 4, line 1; p. 4, line 5 - p. 6, line 19; p. 8, lines 11-18; p. 9, lines 3-13; p. 14, line 19 - p. 15, line 4; p. 16, lines 6-10; p. 19, lines 6-12; p. 19, line 13 - p. 20, line 7; p. 21, lines 4-9; p. 21, lines 10-23; p. 23, lines 20-24). A check on the license plate on Petitioner's car revealed that it was registered to another address, i.e., Greenwood Trailer Park. Sgt. Gunter accordingly went by the Park several times, but never saw Petitioner's car there. (Tr. p. 15, line 8 - p. 16, line 5).

On Friday, November 24, 1989, Sgt. Gunter obtained a search warrant covering the residence located at the intersection of Willowdale Court and East Cambridge Street occupied by "Butch" and any and all vehicles owned or operated by "Butch" or other occupants of the residence. At the time the search warrant was issued, Sgt. Gunter

believed that Petitioner and another woman named Judy lived in the apartment with Butch; however, because the confidential informant did not know Petitioner except by the name "Pat", Sgt. Gunter did not list either Petitioner or Judy by name in the search warrant as being an occupant of the residence. (Tr. p. 8, lines 4-10; p. 9, lines 3-13; p. 19, line 13 - p. 20, line 7; pp. 106-108).

On the afternoon on Friday, November 24, 1989 -- after the search warrant had been issued -- Sgt. Gunter was again contacted by his confidential informant. At that time, he was told that the subjects would be getting a larger quantity of marijuana over the weekend and would have it the first part of the following week. The informant also stated that Pat was carrying the marijuana to work. Because of this information, the search warrant was not executed at that time and Sgt. Gunter

continued his surveillance of the residence. (Tr. p. 6, line 20 - p. 7, line 17; p. 16, lines 11-20; p. 17, line 5 - p. 19, line 5; p. 20, lines 18-20; p. 22, lines 4-17).

Sgt. Gunter also testified that when the search warrant was executed on Thursday, November 30, 1989, Petitioner's car was parked on the street in front of the gate; he observed no other cars in the area. (Tr. p. 7, line 18-25; p. 9, line 14 - p. 10, line 7; p. 23, line 25 - p. 24, line 7). Sgt. Gunter, accompanied by Captain McAllister, knocked on the door of the apartment and it was opened by Judy; they identified themselves and explained that they had a search warrant for the residence. As they entered the apartment, they saw Petitioner and George "Butch" Dillard asleep in a bed directly in front of the door. A young child was seen laying on the couch. The officers found partially consumed marijuana cigarettes in the apartment; one

(1) was beside the bed. (Tr. p. 10, line 8 - p. 11, line 3). After getting the keys to her car from Petitioner, Sgt. Gunter then went outside and searched it. In the trunk he found a blue sports bag containing seventeen (17) bags of plant material and a pocketbook in which two (2) wrapped-up packages of plant material were located. Also found in the pocketbook was a prescription bottle with George Dillard's name on it and papers referring to him. (Tr. p. 11, line 6 - p. 12, line 10; p. 13, lines 6-21). The sports bag was turned over to Captain McAllister who then arrested Petitioner and the others. (Tr. p. 12, lines 11-23).

Sgt. Gunter testified that an analysis of the plant material found in Petitioner's car revealed it to be marijuana. An analysis of the partially consumed cigarettes found inside the apartment also revealed them to be marijuana. (Tr. p. 12,

line 24 - p. 13, line 5; p. 13, lines 22-24).

At the conclusion of Sgt. Gunter's testimony, the defense presented that of Petitioner. She began her testimony by stating that while she had visited George Dillard and his mother on a number of occasions at their apartment, she was living at Lot 17, Greenwood Trailer Park in November. 1989. She also stated that the garage apartment was at least five (5) feet from the road and that the gate to the fence was the only access to the apartment from the road; she stated that a car could not be driven directly to the garage apartment. She testified that when she visited Dillard on November 30, 1989, she parked her car on the public road outside the fence to the apartment, but it was very close to the fence. (Tr. p. 27, line 3 - p. 30, line 25; p. 31, line 23 - p. 32, line 8).

At the conclusion of the suppression

hearing, Petitioner's counsel argued that inasmuch as the search warrant did not indicate that Petitioner's car was included within its scope, the police improperly searched it because it was not within the curtilage nor did they have probable cause to conduct a warrantless search of it. (Tr. p. 32, line 10 - p. 34, line 2; p. 34, line 14 - p. 35, line 2; p. 38, lines 16-25). The State opposed the motion and argued that the search of Petitioner's car was lawful inasmuch as the police had a reasonable basis for believing that she was an occupant of the residence and was therefore covered by the search warrant. The State also argued that Sgt. Gunter's corroboration of the information given by the confidential informant provided probable cause to search the car. (Tr. p. 35, line 4 - p. 38, line 14). The trial court denied the motion to suppress. (Tr. p. 39, lines 1-10).

Thereafter, in the presence of the

jury, the State presented evidence of the marijuana found in Petitioner's car. (Tr. p. 51, line 11 - p. 54, line 13; p. 57, line 23 - p. 59, line 16). This evidence was admitted over the renewed objection of Petitioner's counsel. (Tr. p. 61, lines 8-14; p. 62, lines 8-23).

ARGUMENT

The Supreme Court of South Carolina properly upheld the trial court's denial of Petitioner's motion to suppress marijuana found during the search of her car because the car was covered by the search warrant and, even if it were not covered, probable cause existed to justify the search of the car under the automobile exception to the warrant requirement.

Inasmuch as the evidence presented during the suppression hearing demonstrated that Petitioner's car was covered by the search warrant and, even if not covered, that probable cause existed to justify a

warrantless search of the car, the Supreme Court of South Carolina properly upheld the denial of the motion to suppress.

The search warrant obtained by the police in this case describes the premises to be searched as follows:

> The residence occupied by "Butch" being located on the corner of E. Cambridge St. and Willowdale Ct. The said residence will be on the left behind the corner house. The residence will be a garage type, two story white frame structure surrounded in chain link fence and having wooden steps leading up to the Apt. being upstairs. Any and all vehicles owned or operated by "Butch" or occupants of residents.

(Tr. p. 106; p. 108). The supporting Affidavit is worded almost identically. (Tr. p. 107). It is clear that the warrant covers all vehicles owned or operated by the occupants of the apartment. And, despite the known fact that Petitioner's car was registered to another address, there was more than reasonable cause to believe that Petitioner was an occupant of the apartment at all times involved. Therefore, it is

clear that Petitioner's car fell within the scope of the search warrant even though it was parked on a public road. See United States v. Gentry, 839 F.2d 1065, reh. denied, 844 F.2d 788 (5th Cir. 1988); United States v. Percival, 756 F.2d 600 (7th Cir. 1985); People v. Juarez, 770 P.2d 1286 (Colo. 1989). There was no error in the state court's ruling upholding the denial of the motion to suppress.

However, assuming arguendo this Court should find that Petitioner's car was not covered by the search warrant, the search was still proper inasmuch as it fell within the automobile exception to the warrant requirement.

The Constitutions of both the United States and the State of South Carolina generally proscribe warrantless searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, Section 10. In Katz v. United States, 389 U.S. 347 (1967), this

Court held that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." Id., at 357. One of the exceptions noted by the Court was the automobile exception which is predicated on the long-standing distinction

> between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Carroll v. United States, 267 U.S. 132, 153 (1925). See also United States v. Ross, 456 U.S. 798, 806-807 (1982); State v. Cox, 290 S.C. 489, 351 S.E.2d 570 (1986); State v. Bailey, 276 S.C. 32, 274 S.E.2d 913 (1981); State v. Peters, 271 S.C. 498, 248 S.E.2d

475 (1978).

Since its decision in Carroll v. United States, supra, this Court has addressed the parameters of the automobile exception in numerous cases. For example, in Cardwell v. Lewis, 417 U.S. 583 (1974), a majority of the Court upheld the warrantless search of an automobile lawfully parked in a public place. The plurality upheld the warrantless seizure on the grounds that the police had probable cause to believe the automobile was evidence of a crime and prompt action was necessary because members of the defendant's family might remove the automobile. Id., at 592-593. The mobility of automobiles "creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." South Dakota v. Opperman, 428 U.S. 364, 367 (1976). The automobile exception has been held to be applicable even "in cases in which the possibilities of

the vehicle's being removed or evidence in it destroyed were remote, if not non-existent." Cady v. Dombrowski, 413 U.S. 433 (1973) (exception applied to a locked automobile trunk).

As recent as 1985, this Court reiterated that under the automobile exception, probable cause alone is sufficient to justify a warrantless search of a vehicle lawfully parked in a public place provided that the scope of the search is reasonable. California v. Carney, 471 U.S. 386 (1985). See also State v. Cox, supra.

> [T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant.

Michigan v. Thomas, 458 U.S. 259, 261 (1982). See also United States v. Ross, 456 U.S. at 807, n. 9; State v. Cox, supra. In

Chambers v. Maroney, 399 U.S. 42, reh. denied, 400 U.S. 856 (1970), the Court stated that there is "no difference [for constitutional purposes] between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." Id., at 51-52.

The Record in this case shows that the police had reason to believe that Petitioner was involved in dealing drugs and that evidence of such could be found in her car. As previously stated, they had learned from a reliable informant that there was marijuana in Dillard's apartment -- which the informant and the police believed was shared by Petitioner -- on Wednesday, November 22, 1989. After watching the apartment for two (2) days -- during which the only car

observed going to or leaving the residence was that of Petitioner -- the police obtained a search warrant, covering the residence and the vehicles belonging to any of its occupants, on November 24, 1989. Later that afternoon, the reliable informant told police that Dillard would be getting a larger quantity of marijuana over the weekend and that it would be in the residence by the beginning of the coming week; the informant also stated that Petitioner was carrying the marijuana to her work place. For the next five (5) days, the police continued with their surveillance, but did not execute the warrant; during that time, Petitioner was followed as she drove her car from Petitioner's residence to Greenwood Mills where she worked and, when she finished her shift, back. This information and knowledge -- along with the discovery of (1) partially consumed marijuana cigarettes in the apartment near a

bed occupied by Petitioner at the time the police entered the residence to execute the search warrant and (2) scales found inside a coat belonging to Petitioner which was in the apartment during the execution of the search warrant -- clearly provided probable cause to believe that contraband would be found in Petitioner's car. See State v. Dean, 282 S.C. 136, 317 S.E.2d 744 (1984). Consequently, the warrantless search of Petitioner's car was permissible under the automobile exception to the warrant requirement.

The trial court properly denied Petitioner's motion to suppress and its ruling was, consequently, properly upheld by the Supreme Court of South Carolina.

CONCLUSION

For the reasons set forth hereinabove, it can only be concluded that the Supreme Court of South Carolina properly interpreted and applied its decisions as well as those

of this Court. There is, therefore, no issue for this Court to decide and the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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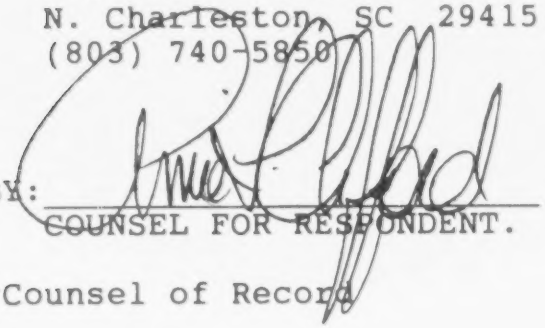

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